
Remarks / Arguments & Status

The application presently contains the following claims:

<i>Independent Claim #</i>	<i>Dependent Claim #s</i>
1 (cancelled)	2-7 (cancelled)
8 (cancelled)	9-14 (cancelled)
15 (cancelled)	16-20 (cancelled)
21	22-26
27 (newly presented)	28-33 (newly presented)
34 (newly presented)	35-40 (newly presented)
41 (newly presented)	42-46 (newly presented)

Applicant's agent acknowledges the change of the Examiner in the prosecution of the present application. Applicant's agent is greatly disappointed to see the withdrawal of the previous indication of allowable subject matter.¹ Applicant's agent respectfully requests that the Examiner reconsider this position. Applicant's agent strongly believes the arguments and the amendments filed previously in the instant application, including those of 22 February 2007, leave the application in position for allowance, and the previous Examiner agreed.

Applicant's agent, however, thanks the Examiner for designating the 21 September 2007 Office Action as non-final. Applicant's agent makes amendments and arguments herein in hopes to persuade the Examiner, as the previous Examiner was persuaded, that the claims of the present application are in position for allowance.

Claims 1-20 are cancelled within this Amendment Response. Claims 27-46 are newly added. Claims 21-25 are currently amended.

¹ The previous indication of allowable subject matter was noted in the Office Action mailed June 7, 2007.

Support for the newly added claims as well as the amendments to the claims can be found with reference to the specification and figures of the application, particularly, but not limited to the language at the following locations within the application:

Page 2, Lines 15-18

“...is provided a system and method by which a mortgage customer who is interested in refinancing their existing mortgage, obtaining a home equity loan, mortgage modification and/or other products offered by mortgage financing companies is identified and referred back to their existing mortgage servicer.”

Page 2, Lines 19-22

“It is an object of this invention to provide a customer retention solution which links mortgage customers who are contemplating refinancing their mortgage with another lender back to their existing mortgage servicer, thus providing the servicer the opportunity to offer their customer valuable information about the customer’s existing mortgage, a home equity loan, refinancing options, bi-weekly mortgage payments, mortgage modification and/or other products that the servicer offers.”

Page 4, Lines 27-31

“With the prevalency of Internet service providers, it is easy for consumers to access a web site 30 and begin the process of mortgage modification. The homeowner provides various personal indicia, e.g., social security number, name, home address, etc., all of which is resident in an internal database 46. “

Page 5, Lines 4-5

“If the homeowner does not know the identity of the mortgage servicing institution, then he is queried with a series of identification aids 36.”

Page 5, Lines 10-11

“Alternatively, the consumer is offered the option of seeking a personal credit report 40, which would contain the name of the present mortgage servicer 44.”

Page 6, Line 10

“The mortgage servicer is now electronically identified...”

Page 6, Lines 17-20

“Proceeding to block 407, authorization is given by the user to contact the existing mortgage servicer via internal links. At block 408, the system sends the pertinent data to the mortgage servicer and servicer is notified of consumer’s request, thereby confirming that the user was routed by the website to the mortgage servicing institution.”

Page 5, Lines 22-23

“The data entry means also provides the user with interactivity to determine eligibility or suitability to the products and/or services presented.”

Page 6, Lines 1-2

“In this figure, the user learns specific information about mortgage modification and also its availability from his current mortgage servicer 402.”

Page 6, Lines 28-30

“At block 502 FIG. 5, the user learns specific information about a Home Equity Loan and also its availability from his current mortgage servicer.”

Page 7, Lines 21-22

“At block 602 FIG. 6, the user learns specific information about Other Products & Services and also their availability from his current mortgage servicer.”

Page 8, Lines 13-14

“At block 702 of FIG. 7, the user learns specific information about Bi-Weekly Mortgage Payment Plans and their availability from his current mortgage servicer.”

35 U.S.C. §112 Rejection & Responsive Arguments

The examiner has rejected claims 1-20 under this section, first paragraph, as failing to comply with the enablement requirement. The Examiner asserts the claims contain subject matter that was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The Examiner specifies that claims 1, 8 and 15 include the limitation, “linking...regardless of the type of mortgage instrument...” was not supported by the originally filed disclosure, nor would one of

ordinary skill in the art at the time of the invention be able to ascertain how a "linking" between a borrower and a servicing institution would be conditional on the type product the borrower holds.

The application at hand makes no indication that the process is limited to any particular mortgage product, and it is asserted that the language makes it clear that the linking between the borrower and the servicing institution is **not** conditional on the type of product the borrower holds. While Applicant's Agent respectfully disagrees with the Examiner's opinion that the limitation was not supported by the specification, claims 1-20 have been cancelled in this Amendment Response, and have been replaced with newly added claims 27-46. The newly added claims do not include the limitation quoted by the Examiner, and as such, Applicant's agent believes the rejection under this section is now moot.

35 U.S.C. §102 Rejection & Responsive Arguments

The examiner has rejected claims 1, 2, 5-7, 21, 22, 25 and 26 under this section, subparagraph (e) as being anticipated by U.S. Patent Application Publication No. 2001/0056397 to Kelly et al. ("Kelly"). The examiner asserts that Kelly discloses a system and method for tracking and modifying a mortgage rate, wherein the method includes the steps of: capturing customer indicia information input by a borrower using a web browser or an email program, identification of the borrower's existing mortgage servicing institution through information input by the borrower and linking the borrower with the borrower's existing mortgage servicing institution, and notification of the borrower's existing mortgage servicing institution. The examiner further indicates that Kelly discloses securing permission of the borrower prior to notification of the borrower's mortgage servicing institution, displaying the customer retention program, including a mortgage modification option, and changing terms on the borrower's original mortgage, where the mortgage may be any product offered by the existing mortgage servicing institution.

Applicant's agent believes the newly added claims 27-46 and the amendments to claims 21-26 leave all claims of the present application in position for allowance. Kelly does not teach of the process of the present claims, wherein the borrower has an existing mortgage associated with an existing relationship with a mortgage servicing institution but is considering entering into a different relationship with a different mortgage servicing institution. The customers using the Kelly product have no intentions of establishing a relationship with a different mortgage servicing institution, and instead have every intention of staying with their existing mortgage servicing institution because the Kelly mortgage product contractually requires the customer's current mortgage product to be modified. (Kelly, Par. 0021). The customers of Kelly would, by definition, have no reason to

consider going to a different mortgage servicing institution for a rate change, when the existing mortgage servicing institution is already required to do so. The users of the present invention, contrarily, are actively considering establishing a new relationship with a different mortgage servicing institution. (See Page 3, Line 30 through Page 4, Line 9 of the present application as filed).

Kelly also allows for a user-initiated modification of the mortgage product. (Kelly, Par. 0032). For a user-initiated modification to occur, as illustrated in Kelly, the user must necessarily know a modification can occur. The invention of the present application speaks to this void in the Kelly invention. Customers that do not know a mortgage modification can occur will not contact the existing mortgage servicing institution. Furthermore, if the customer desires to contact the existing mortgage servicing institution, the customer may not know the identity of the existing mortgage servicing institution. (See Page 4, Lines 10-24 of the present application as filed).

There is currently a well-documented mortgage crisis in the United States. Many recently published articles speak to the thousands of Americans that are trapped in their current mortgage and unable to find help, with many of these cases ending in foreclosure. A number of recent articles documenting this tragic situation are attached to this Amendment Response. At the time of the filing of the present application, this situation had not yet developed. However, it is now apparent that the invention taught in the present application can assist with the recovery of the current mortgage market.

Many of these homeowners trapped in their mortgages are unaware of where to turn to get help, as is documented in the articles. The USA Today reports in its article entitled "Homeowners late on loans often don't seek help" (attached) that "a surprising 58% of delinquent homeowners don't know their lenders may offer ways to help them keep their homes, and 56% don't know that free counseling exists to help them." The present invention allows homeowners to identify their mortgage servicing institution, links the homeowner to the mortgage servicing institution, and notifies the mortgage servicing institution that the homeowner is considering a change in their mortgage relationship. This link will allow homeowners and mortgage servicing institutions to work together to modify the existing mortgage, and in some situations may avoid foreclosure.

Kelly does not anticipate this solution, as is shown by the fact that the invention taught by Kelly has been publicly available since at least December 27, 2001, over six years. The Kelly instrument is not working to solve the same problems the present invention speaks towards. Kelly does not teach of a process that allows the customer to be linked to the customer's existing

mortgage servicing institution when they begin to consider ending the relationship with the customer's existing mortgage servicing institution for a different mortgage servicing institution.

Furthermore, Kelly does not teach of identifying the existing mortgage servicing institution, as was acknowledged by the previous examiner. Kelly also lacks teaching of linking the borrower with the borrower's mortgage servicing institution, and notifying that servicing institution, as was also admitted by the previous examiner. As the previous examiner agreed, the object of Kelly is to provide a mortgage instrument that can be continuously modified, either at the request of the customer or automatically when certain parameters have been met. Kelly does not teach of a process that allows any borrower (even those borrowers that do not currently have the mortgage product of Kelly) to be linked to their existing mortgage servicing institution when they require modification of the mortgage. Kelly lacks teaching of many of the elements of the present invention as currently claimed.

35 U.S.C. §103 Rejection & Responsive Arguments

The examiner has further rejected claims 3, 4, 8-20, 23 and 24 under this section, subparagraph (a) as being obvious over Kelly as applied to the claims 1, 2, 5-7, 21, 22, 25, and 28 above, in view of Applicant's Disclosure. The examiner asserts Kelly discloses the system and method set forth above including the steps of: capturing indicia input by a borrower; linking the borrower with the mortgage servicing institution, and notifying the institution.

The arguments made above in regards to the rejection under §102 equally apply to the present §103 rejection. Applicant's agent respectfully requests the examiner consider the above arguments in relation to the present rejection as well.

Furthermore, the examiner admits that Kelly does not teach of identifying the borrower's mortgage servicing institution by a borrower's credit report, electronically parsing the borrower's credit report to identify at least one of the borrower's mortgage servicing institutions. The examiner asserts that this was known in the art, however.

While these elements may have been individually known in the art, it was not obvious to combine the elements of identifying the servicing institution by the borrower's credit report and electronically parsing the credit report to identify the servicing institution with the Kelly invention. The Kelly invention inherently teaches away from including these limitations, as they would be wasteful. Because the Kelly invention is essentially a mortgage instrument that can be continually modified, there is absolutely no motivation to identify the mortgage servicing institution, as there is

no need for that link to be made. The user of the Kelly invention, being essentially married to the existing mortgage servicing institution, and having no reason to seek out a different mortgage servicing institution, has necessarily already identified and made contact with their existing mortgage servicing institution before the mortgage modification is made! There is no reason for the invention to include steps of identifying the existing mortgage servicing institution by the credit report or to electronically parse the credit report to do so. The invention at hand was not obvious in light of Kelly and the Applicant's Disclosure.

Furthermore, as argued previously, the contractual mortgage instrument product of the Kelly invention requires the borrower to enter into a **new** mortgage loan with terms allowing for the adjustment of rates. As is explicitly stated in Kelly, "the present invention begins with a mortgagee contracting for (and obtaining) a **new type of mortgage instrument** that includes a contractual provision specifying that the mortgage rate of the instrument will decrease under certain market conditions..." (emphasis added) [Kelly, Par. 0021]. Kelly teaches that this new mortgage instrument may be an original transaction or a refinance transaction. [Kelly, Par. 0022]. The Kelly invention further capitalizes on the requirement of the new mortgage, by using the start date or funding date as an integral date for implementation of the Kelly invention. [Kelly, Par. 0022]. The Kelly invention offers no way of implementing the invention with an **already existing** mortgage, nor even mentions the invention being useful for an **already existing** mortgage instrument, as is currently claimed by Allen.

The Allen invention, as claimed in the application at issue, offers a method for providing the option of modifying the terms of their existing loan without requiring a new loan or classic refinancing (which also requires a new loan instrument to be implemented) to take place. As has been explained before, a classic or conventional mortgage refinancing is actually a brand new loan from the perspective of the financing institution that is securing the refinancing customer. The old mortgage is paid off and a new mortgage is put into place. Implementing an original new mortgage loan, or a classic refinancing of an existing loan, results in new loan fees, such as loan origination fees, appraisal fees, and many others. The Allen invention allows the borrower to avoid the hassle of implementing an original new loan or a classic refinancing of a loan, along with eliminating the excess fees resulting from the new loan. Instead, the Allen invention claims a process that links the borrower to their existing mortgage servicing institution so the mortgage servicing institution may modify the terms of the existing mortgage loan, if desired by the borrower and mortgage servicing institution. The Allen invention educates consumers then provides a link to their current mortgage servicer, often saving unnecessary consumer and lender fees through mortgage modification. This is especially important in the current mortgage crisis, wherein homeowners that may already be late

on a mortgage payment are unlikely to have the funds required to complete a typical refinance purchase.

The loan modification facilitated by the Allen invention is not a refinance; it is a change to interest rate and/or payment requirements **without** requiring the borrower to implement a new loan or classic refinancing, as is required by the teachings of the Kelly reference. A change in rates and payments using the Allen invention does not result in the need for a new closing, legal fees, survey, appraisal, or taxes as would be required by the Kelly reference, with its required beginning of implementing a new or classic refinanced mortgage product. In contrast, a refinance is a new mortgage and the borrower will need to pay a variety of fees and taxes that often costs thousands more than mortgage modification.

It is well settled that the omission of an element and its function within an already known invention is only an obvious expedient if the remaining elements perform the same function as before. See *Application of Karlson*, 311 F.2d 581 (CCPA 1963). In the present matter, the Allen invention eliminates the necessary Kelly element of requiring the customer to initially implement a new mortgage instrument, namely the specific mortgage instrument proposed by Kelly.² Allen not only eliminates that element and function of Kelly, but also changes the function of the invention. The improved function of the Allen invention, that was not foreseen by the Kelly reference, allows all consumers the ability to modify their existing mortgage instrument, with no limitation as to the mortgage instrument held by the consumers. Allen's elimination of Kelly's necessary element and function of the element, while performing a different function shows Allen's invention in the application at hand is not an obvious variation of the Kelly reference.

The Allen invention allows the consumer to modify the terms of their existing mortgage, with no limitation as to what mortgage instrument the consumer uses. This is not so with the Kelly reference. The Kelly reference only allows for the modification of the specific mortgage instrument described in the Kelly reference. This elimination of elements and different outcome to serve the same purpose is illustrated in the chart shown below:

² See [Page 2, Para 0021] of the Kelly reference: "the present invention begins with a mortgagee contracting for (and obtaining) a **new type of mortgage instrument** that includes a contractual provision specifying that the mortgage rate of the instrument will decrease under certain market conditions..." (emphasis added). Furthermore, the new mortgage instrument of Kelly is a necessary element of the Kelly reference, as the Kelly reference requires the start date or funding date of the new mortgage instrument as an integral date for implementation of the Kelly invention. [Page 2, Para 0022].

Kelly Reference	Allen invention (application at hand)
Consumer seeks to refinance existing mortgage instrument and is paired with existing or new lending institution.	Consumer seeks to refinance existing mortgage instrument and is paired with existing lending institution.
Consumer refinances existing mortgage instrument and implements mortgage instrument introduced by Kelly during the refinancing process.	ELIMINATED
Consumer is able to modify their Kelly mortgage instrument without future refinances.	Consumer is able to modify their existing mortgage instrument without the refinance process.
Consumer using Kelly mortgage instrument saves on future refinancing fees.	Consumer using process of Allen invention saves on all refinancing fees.

The Allen invention, as claimed in the application at issue, offers a method for providing the option of modifying the terms of their existing loan without requiring a new loan or classic refinancing (which also requires a new loan instrument to be implemented) to take place. The process claimed by the Allen invention allows **any consumer** to avoid the refinancing process by allowing modification on **any mortgage instrument**. Considering there are tens, if not hundreds, of mortgage instruments commonly available to the average consumer, the Allen invention allows modification of any of these instruments without burdening the consumer with the refinancing process. This allows the present Allen invention to be available to many consumers that Kelly is not currently available to.

From the borrower's point of view, mortgage modification (as opposed to entering into a new mortgage contract as the mortgage instrument taught by Kelly requires) saves hundreds to thousands of dollars in refinancing fees, which can be avoided since the basic transaction and mortgage contract is preserved, albeit in modified form. From the mortgage servicer's point of view, modification of the existing mortgage contract without requiring the borrower to enter into a new agreement gives the servicer the opportunity to retain the borrower by offering the borrower valuable cost saving opportunities for the borrower's present mortgage loan.

Furthermore, as the examiner is familiar with, most inventions arise from a combination of old elements and each element may often be found in the prior art.³ However, mere identification in the prior art of each element is insufficient to defeat the patentability of the combined subject matter as a whole. The examiner must articulate the basis on which he concludes that it would have been obvious to make the claimed invention and explain the reasons one of ordinary skill in the art would have been motivated to select the references, or teachings contained therein and to combine them to render the invention obvious. This “motivation-suggestion-teaching” requirement protects against the entry of hindsight into the obviousness analysis, a problem which §103 was meant to confront.⁴ Therefore, the “motivation-suggestion-teaching” test asks not merely what the references disclose, but whether a person of ordinary skill in the art, possessed with the understandings and knowledge reflected in the prior art, and motivated by the general problem facing the inventor, would have been led to make the combination recited in the claims.⁵ Additionally, an obviousness determination requires not only the existence of a motivation to combine elements from different prior art references, but also that a skilled artisan would have perceived a reasonable expectation of success in making the invention via that combination.⁶ However, to have a reasonable expectation of success, one must be motivated to do more than merely to “vary all parameters or try each of numerous possible choices until one possibly arrived at a successful result, where the prior art gave either no indication of which parameters were critical or no direction as to which of many possible choices is likely to be successful.”⁷ Similarly, prior art fails to provide the requisite “reasonable expectation” of success where it teaches merely to pursue a “general approach that seemed to be a promising field of experimentation, where the prior art gave only general guidance as to the particular form of the claimed invention or how to achieve it.”⁸

Applying the mandates of the Court of Appeal, Federal Circuit, it is clear that Kelly merely provides a starting point for the experimentation, and that only by trial and error, would perhaps, a serendipitous result be arrived at by the experimentalist as taught by the Allen invention, and as claimed by the pending application. There is absolutely no teaching within Kelly to identify the borrower’s current mortgage servicing institution either through the customer indicia input by the

³ *In re Leonard R. Kahn*, 441 F.3d 977, 987, (Fed. Cir. 2006), citing *In re Rouffet*, 149 F.3d 1350, 1357 (Fed. Cir. 1998)

⁴ *Kahn* at 986; *Rouffet* at 1357-59

⁵ *Kahn* at 988, citing *Cross Med. Prods.*, 424 F.3d 1293, 1321-24 (Fed. Cir. 2005)

⁶ *Medichem, S.A. v. Rolabo, S.L.* 437 F.3d 1157, 1165 (Fed. Cir. 2006), citing *In re O’Farrell*, 853 F.2d 894, 903-04 (Fed. Cir. 1988)

⁷ *Medichem* at 1165; *O’Farrell* at 903

⁸ *Medichem* at 1165; *O’Farrell* at 903

borrower, linking the borrower with the mortgage borrower's mortgage servicing institution (by use of credit report or otherwise), and notifying the borrower's mortgage servicing institution. In fact, Kelly provides no motivation even to consider any of these steps, as the existing mortgage servicing institution is unnecessary to the Kelly invention, as the Kelly invention requires a new mortgage loan or a conventional refinanced mortgage loan to implement the new mortgage instrument of the Kelly invention.

It is hard to fathom what suggestion an experimentalist would be following to arrive at the claimed subject matter as stated by the examiner. There is none stated within Kelly, thereby leading to the very result cautioned against by the Court of Appeals, Federal Circuit, in *Medichem*, namely to "vary all parameters or try each of numerous possible choices until one possibly arrived at a successful result, where the prior art gave either no indication of which parameters were critical or no direction as to which of many possible choices is likely to be successful." At best, Kelly teaches merely to pursue a "general approach that seemed to be a promising field of experimentation, where the prior art gave only general guidance as to the particular form of the claimed invention or how to achieve it."

Request for Reconsideration

Applicant believes that all independent claims clearly define over the prior art and that the distinctions between the present invention and the prior art would not have been obvious to one of ordinary skill in the art. Additionally, the remaining dependent claims, by the limitations contained in the base independent claims, are felt to be patentable over the prior art by virtue of their dependency from independent claims which distinguish over the prior art of record. All pending claims are thought to be allowable and reconsideration by the Examiner is respectfully requested.

It is respectfully submitted that no new additional searching will be required by the examiner.

Fee Determination Record

A fee determination sheet is attached for this amendment response. The Commissioner is hereby authorized to charge any additional fee required to effect the filing of this document to Account No. 50-0983.

Conclusion

It is respectfully submitted that all references identified by the examiner have been distinguished in a patentably novel and non-obvious way through this and previous amendments. If

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the examiner believes that a telephonic conversation would facilitate a resolution of any and/or all of the outstanding issues pending in this application, then such a call is cordially invited at the convenience of the examiner.

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